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June 4, 2004

MEMORANDUM TO: James J. Jochum
Assistant Secretary
for Import Administration

FROM: Jeffrey May
Deputy Assistant Secretary
Import Administration, Group I

SUBJECT: Issues and Decision Memorandum for the 2001-2003 Administrative Review of Stainless Steel Bar from Germany: Final Results

SUMMARY

We have analyzed the case briefs and rebuttal brief of interested parties in the first administrative review of stainless steel bar from Germany. As a result of our analysis, we have made changes in the margin calculations. We recommend that you approve the positions we have developed in the Discussion of Issues section of this memorandum. Below is a complete list of the issues in this review for which we received comments and rebuttals by parties:

Comment 1: Level of Trade Adjustment
Comment 2: Indirect Selling Expenses
Comment 3: U.S. Commissions
Comment 4: Gross Unit Price Clerical Error
Comment 5: Adjustment in Quantity Clerical Error
Comment 6: Arm's Length Test Matching Criteria

BACKGROUND

On February 5, 2004, the Department of Commerce ("the Department") issued the preliminary results of the first administrative review of the antidumping duty order on stainless steel bar from Germany. See Stainless Steel Bar from Germany: Preliminary Results of Antidumping Duty

Administrative Review, 69 FR 5493 (February 5, 2004) (“Preliminary Results”). The period of review (“POR”) is August 2, 2001, through February 28, 2003.

We invited parties to comment on the preliminary results of the review. On March 8, 2004, Carpenter Technology Corp., Crucible Specialty Metals Division of Crucible Materials Corp., Electralloy Corp., Slater Steels Corp., Empire Specialty Steel and the United Steelworkers of America (AFL-CIO/CLC) (collectively, “petitioners”), and the respondent BGH Edelstahl Freital GmbH, BGH Edelstahl Lippendorf GmbH, BGH Edelstahl Lugau GmbH, and BGH Edelstahl Siegen GmbH (collectively, “BGH”) filed case briefs. On March 15, 2004, BGH filed a rebuttal brief.

DISCUSSION OF ISSUES

Comment 1: Level of Trade Adjustment

Petitioners’ Argument: The petitioners argue that BGH improperly based its level of trade analysis on quantitative differences between channels of distribution rather than on the presence of significantly different selling functions that affect price comparability. Therefore, the petitioners argue that the Department should re-code all home market sales as one level of trade and match all U.S. sales to all home market sales without making a level of trade adjustment.

The petitioners claim that BGH’s methodology for assigning levels of trade, based on whether the quantity of a reported transaction on an invoice was above or below 500 kilograms, results in different line items on the same invoice having different levels of trade, even though the terms of sale were the same for all items on the invoice. The petitioners argue that this approach violates the Statement of Administrative Action’s (“SAA”) mandate that when considering a level of trade adjustment, the Department must “ensure that a percentage difference in price is not more appropriately attributable to differences in the quantities purchased in individual sales,” and the Department’s practice of examining different channels of distribution on the basis of “physically different marketing stages marked by qualitatively and quantitatively different selling functions,” distinctions that are not present in this case.

The petitioners argue that it is common for a customer to purchase different grades or sizes of merchandise in the same distribution channel at very different quantity levels because the particular end-use of a certain product is different. However, while quantities purchased may differ sufficiently to warrant an adjustment pursuant to section 773(a)(6)(C)(i) of the Tariff Act of 1930, as amended, (“the Act”), such an analysis is separate and distinct from the issue of the proper definition of distribution channels. The petitioners argue that separate channels of distribution are not a prerequisite to determining actual differences in quantity and differences in quantity do not establish separate distribution channels. Therefore, the petitioners contend that BGH incorrectly defined level of trade by relying on elements not pertinent to actual marketing stages.

In addition, the petitioners argue that BGH’s supporting evidence does not substantiate a finding of

separate levels of trade based on significantly different selling functions. For example, the petitioners note that BGH has overstated differences in inventory maintenance by claiming that inventory maintenance is “none” for U.S. channel of distribution 1 sales and “large” for home market channels of distribution 3 and 4, despite the fact that BGH has reported that, for each of these channels, the amount of time in inventory in Germany is the same. Similarly, for all other areas typically used by the Department to measure differences in selling functions, such as warranty service and advertising, there are no significant differences in selling functions among home market sales. The petitioners cite the Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy, 61 FR 30287 (June 14, 1996) as evidence that the Department, in making a level of trade determination, considers all types of selling functions, both claimed and unclaimed, that had been performed, with no single selling function being sufficient to warrant the granting of separate levels of trade. Similarly, the petitioners claim that the Department, in Final Results of Antidumping Administrative Review: Gray Portland Cement and Clinker from Mexico, 62 FR 17155 (April 9, 1997), denied a respondent’s request for a level of trade adjustment because the selling functions were largely the same across all channels of distribution reported. If the precedents from these cases are applied to BGH’s reported customer groups, the Department would conclude that there are no differences in levels of trade.

The petitioners also argue that BGH did not demonstrate how its claimed differences in levels of trade, rather than differences in quantities, resulted in a pattern of consistent price differences. The petitioners argue that sales of “very” small quantity orders is standard practice in virtually every steel-related industry, and does not amount to a type of service center function, as BGH seeks to define its channel 4 sales, nor does it warrant the creation of a separate channel of distribution. Moreover, the petitioners argue that BGH’s level of trade analysis based on differences in quantity, coupled with the failure to demonstrate significant differences in selling functions, make it impossible for BGH to isolate any effect on prices to determine if it arises from differences in a level of trade rather than other factors. The petitioners contend that the data on the record of this case suggests that the percentage differences in price between sales made through channels 3 and 4 are attributable to differences in quantities, not differences in selling functions. Therefore, the petitioners argue that if the Department does consider a level of trade adjustment for BGH, it should first exclude the price surcharge for quantities reported by BGH for its channel 4 sales.

Respondent’s Argument: BGH contends that the Department properly determined that the selling activities performed for channel 4 sales consisted of “service center” functions that differed significantly from the selling activities performed on sales made through channels of distribution 1, 2, and 3. Similarly, BGH argues that these differences in selling activities resulted in a pattern of consistent price differences for sales made through channel 4. Accordingly, BGH argues that the Department should continue to assign home market level of trade 1 (“LOTH 1”) to sales made through channels of distribution 1, 2, and 3 and home market level of trade 2 (“LOTH 2”) to all sales made through channel of distribution 4 for the final results.

BGH states that the Department’s analysis of the activities performed in each of BGH’s channels of

distribution is in line with Department regulations and past practice. BGH states that the Department correctly concluded from its analysis that:

Channel 4 is like an “internal” service center wherein customers still purchase from factory inventory, but usually in very small quantities of less than one bar which can be specially cut and finished. This requires retrieving the bar from inventory, weighing, sawing, re-weighing the cut portions, testing stamping and marking, creation of a mill certificate, and occasionally peeling and grinding. The unused portions of the bar must be returned to inventory. BGH charges a substantial surcharge for this service.

See BGH’s rebuttal brief, at page 5.

Moreover, BGH noted that the Department based this analysis on information collected and analyzed at verification as well as from a review of BGH’s submissions. BGH states that the Department found that channel 4 sales differed significantly from sales made through each of the other channels of distribution in both “sales process and marketing support” and “warehousing and inventory.” As a result, the Department recognized channel 4 as a distinct level of trade.

BGH states that the thrust of the petitioners’ argument is that selling activities cannot be different for similar or identical products when they are sold at the same terms and recorded on the same invoice. In other words, the petitioners are arguing that two transactions must be made at the same level of trade if they are listed on the same invoice. BGH states that the way an invoice is drafted is a function of a company’s bookkeeping system and not determinative of a company’s channels of distribution. BGH stated that its invoices include information pertinent to all items shipped to the same customer at the same time even if a customer places orders for products through different channels of distribution. As a result, BGH states that it is not uncommon for orders placed through different channels of distribution to be listed on the same invoice.

BGH argues LOTH 2 is not distinguished by quantity alone but by differences in selling activities, such as warehousing and service center functions. BGH argues that the 500 kilogram limit on LOTH 2 sales serves only to identify those products that required special services, such as cutting or sawing. BGH argues that the petitioners have never disputed the fact that 500 kilograms is an appropriate indicator of which bars require special services in stating that “orders less than 500 kgs. must be cut.” See BGH’s rebuttal brief, at page 9. Therefore, BGH argues that the Department should reject the petitioners’ claim that LOTH 2 is defined only by differences in quantities. BGH states that the Department rejected similar claims by parties in Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Spain, 67 FR 35482 (May 20, 2002) and accompanying “Issues and Decision Memorandum” at comment 1.

Similarly, BGH argues that the petitioners did not challenge the Department's recognition of the distinctive service center functions performed on channel 4 sales. BGH argues that evidence on the record indicates that service center functions, such as sawing and testing, are performed more extensively in channel 4 sales than on sales made through any other channel of distribution. Specifically, BGH argues that there are substantial differences in inventory and warehousing between sales made in channels 1, 2, and 3 and sales made in channel 4. BGH states that all of the transactions in channel 4 undergo inventory and warehousing, while only a fraction of the transactions through channels 1, 2, or 3 involve inventory and warehousing activities. Accordingly, BGH argues, the Department properly determined that channel 4 sales constituted a separate level of trade from sales made through channels 1, 2, and 3. BGH argues that past Department practice illustrates that the Department has considered a channel of distribution as representative of a different level of trade from direct sales when that channel involved service center functions such as cutting or sawing. BGH cites Department findings in Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Bars from Luxembourg 67 FR 35488 (May 20, 2002) and accompanying "Issues and Decision Memorandum" at comment 2; Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany, 67 FR 35497 (May 20, 2002) and accompanying "Issues and Decisions Memorandum" at comment 3; and Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Spain 67 FR 35482 (May 20, 2002) and accompanying "Issues and Decision Memorandum" at comment 1, as support for its argument.

BGH also argues that there is a pattern of consistent price differences between LOTH 1 and LOTH 2. BGH included an appendix to its rebuttal brief in which BGH identified the gross unit price for all control numbers ("CONNUMs") sold in both LOTH 1 and LOTH 2. BGH states that this analysis shows that the average gross unit price of those CONNUMs sold in LOTH 2 was greater than the average gross unit price for those CONNUMs sold in LOTH 1. BGH also argues that this analysis reveals that the majority of CONNUMs sold through both levels of trade had a higher price when sold through LOTH 2. BGH argues that the petitioners have not submitted any evidence challenging this pattern. In addition, BGH argues that whether these price differences are adjusted by means of a difference-in-quantity adjustment or a level of trade adjustment is irrelevant. BGH states that the main point is that those sales made in LOTH 2 are made at considerably higher prices because they undergo different selling activities that are not substantially performed on LOTH 1 or LOTU sales. Therefore, BGH argues, LOTU 1 sales cannot properly be matched to LOTH 2 sales without adjusting for these price differences.

Department's Position: We agree, in part, with both the petitioners and BGH. We have eliminated the 500-kilogram benchmark as one of the criteria for distinguishing between levels of trade in the home market; however, we continue to find that there are two distinct levels of trade in the home market. LOTH 2 continues to identify home market sales with service center type selling functions, although sales in LOTH 2 now include only sales made from the BGH warehouse for which "other revenue" is charged on the sales invoice.

In its September 22, 2003, supplemental response, BGH stated that any special services performed on channel 4 sales warrant a charge for the service provided that is reflected in the gross unit price and/or other revenue field on the invoice. At verification, we performed multiple completeness tests and factory inspections to determine the extent to which these service center functions, such as sawing, cutting, finishing, and testing were performed on BGH's home market sales. We confirmed that such service center functions were performed, to varying degrees, on sales made through all channels of distribution. In addition, at verification we confirmed that the "other revenue" field on the invoice reflected charges for these services. See Memorandum to John Brinkmann, "Verification of the Responses of BGH Group, Inc. in the First (1st) Antidumping Administrative Review of Stainless Steel Bar from Germany," ("Verification Report") dated January 20, 2004 at pages 5-8 which is on file in the Department's Central Records Unit, located in Room B-099 of the main Department building ("CRU"). In conducting this analysis, we concluded that, while BGH did perform these functions on sales through all channels of distribution, BGH performed these service center functions much more frequently on sales made through channel 4 sales than on sales made through channels 1, 2, and 3.

The SAA, in stating that the Department must "ensure that a percentage difference in price is not more appropriately attributable to differences in quantities purchased in individual sales," precludes the Department from making a level of trade determination on the basis of a difference in quantities alone. See H.R. Doc. No. 103-361(I) (1994). Section 773(a)(7)(A)(i) and (ii) of the Act compels the Department to consider differences in selling activities and the effect on price comparability in establishing different levels of trade for the purposes of making a level of trade adjustment. In addition, the Department's regulations stipulate at 19 CFR 351.412(b)(2) that the Department will determine that sales are made at different levels of trade if they are made at different marketing stages. In its determinations, it has been the Department's practice to require differences in more than one selling activity before finding distinct levels of trade. See Final Results of Sales at Less Than Fair Value: Certain Pasta from Italy, 61 FR 30287, 30330 (June 14, 1996) ("Pasta from Italy").

Based upon our analysis of the record in this review, we have revised our level of trade findings to exclude the 500-kilogram quantity benchmark as one of the factors for assigning certain selling functions to specific transactions. There is no record evidence to support a finding that all sales made from the BGH warehouse in quantities of less than 500 kilograms incurred selling functions similar to those provided by a service center. While many sales made from the warehouse in channel 4 had additional "other revenue" charges to account for specific additional services (sawing, cutting, finishing, and/or testing), we are only able to confirm that these specific services were provided in instances in which "other revenue" was separately recorded on the sales invoice. We disagree with BGH's contention that it is reasonable to assume that all warehouse sales of less than 500 kilograms would have incurred such additional charges and that, when they are not separately charged on the invoice as other revenue, the additional charges are built into the gross sales price. We have observed instances where, on the same invoice there are line items recording sales of the same stainless steel bar at quantities above and below 500 kilograms, where BGH did not report an other revenue charge, yet these line items carried

the same gross unit price. This leads us to conclude that service center functions can only be confirmed on sales transactions where there is an “other revenue” charge on the invoice.

We continue to find for these final results that certain sales by BGH were made at two separate and distinct levels of trade. 19 CFR 351.412(c)(2) of the Department’s regulations states that “{t}he Secretary will determine that sales are made at different levels of trade if they are made at different marketing stages (or their equivalent). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing. Some overlap in selling activities will not preclude a determination that two sales are at different stages of marketing.” In conducting our level of trade analysis, we consider all types of selling functions performed in the production and sale of the subject merchandise in the home market. In the Preliminary Results, we examined the chain of distribution and the selling activities associated with sales reported by BGH to its four channels of distribution in the home market. We found that sales in channels of distribution 1 and 2 were made at the same level of trade on the basis that sales through both channels were made-to-order sales exhibiting the same selling functions with regard to sales process, freight services, inventory service and warranty service. We also determined that, although distribution channel 3 sales made from inventory differed from distribution channels 1 and 2 with respect to warehouse inventory, these channel 3 sales were otherwise similar to distribution channels 1 and 2 with respect to sales process, freight services, and warranty service and, therefore, distribution channels 1, 2 and 3 constituted a distinct level of trade (LOTH 1). Conversely, we found that home market distribution channel 4 constituted a distinct level of trade (LOTH 2) from channels of distribution 1, 2 and 3. Although channel 3 and 4 sales were made from warehouse inventory, channel 4 sales were made in small quantities (less than 500 kilograms) and incurred additional services similar to those exhibited in a “service center.” We also found that channel 4 sales differed significantly from sales made through channels 1, 2 and 3 with respect to sales process. Therefore, based upon our overall analysis in the home market, in the Preliminary Results, we found that LOTH 1 and LOTH 2 constituted two different levels of trade.

For these final results, based upon our determination to rely upon actual “other revenue” charged, rather than quantity sold, as a benchmark for defining service center selling functions, we have revised our level of trade findings. LOTH 1 is now comprised of distribution channels 1 and 2, as well as distribution channels 3 and 4 sales made from inventory for which no additional “other revenue” charges were reported on the sales invoice. These distribution channel 3 and 4 sales from warehouse with no additional “other revenue” charges are similar to BGH’s distribution channel 1 and 2 sales with respect to sales process, freight services, and warranty service. LOTH 2 differs from our Preliminary Results in that it now only includes distribution channel 3 and 4 sales from inventory with service center selling functions, as indicated by the “other revenue” charges. Because of the presence of these service center selling functions, LOTH 2 differs significantly from LOTH 1 with respect to sales process and inventory maintenance. Based upon our overall analysis in the home market, we find that LOTH 1 and LOTH 2 constitute two different levels of trade.

We continue to find that LOTH 1 is similar to LOTU 1 with respect to sales process, freight services, warehouse/inventory maintenance and warranty service. Consequently, we matched the LOTU 1 sales to sales at the same level of trade in the home market (LOTH 1). Where no matches at the same level of trade were possible, we matched to sales in LOTH 2 and we made a level of trade adjustment. See section 773(a)(7)(A) of the Act.

Comment 2: Indirect Selling Expenses

Petitioners' Argument: The petitioners argue that BGH failed to examine whether certain types of expenses reported as indirect selling expenses, such as advertising expenses, were in fact direct selling expenses directly related to sales made during the POR.

The petitioners argue that the Department confirmed at verification that BGH did not further examine the specific types of expenses recorded in specific cost types or cost centers to determine whether they were direct or indirect selling expenses. For example, the petitioners note that BGH did not examine the exact nature of the advertising expenses recorded in several accounts. They also note that in selecting cost centers and accounts to report as selling expenses, BGH did not examine whether the same types of expenses were recorded by each of its affiliated companies in the same cost center and account. Thus, as BGH did not make the effort to distinguish indirect and direct selling expenses, nor did it provide documentation at verification to prove that these expenses were properly reported as indirect expenses, the Department should reclassify certain types of indirect expenses as direct selling expenses.

Respondent's Argument: BGH argues that the petitioners' claim that the Department should re-code certain selling expenses as direct selling expenses is unsubstantiated and should, therefore, be rejected.

BGH states that, with regard to the petitioners' claim that certain reported indirect selling expenses are actually direct selling expenses, the petitioners never produced evidence supporting their claim that these expenses are directly related to sales made during the POR. BGH notes that it is the Department's long-standing practice to treat advertising expenses as direct selling expenses, only if the respondent incurs them to advertise to its customer's customer. BGH cites to its questionnaire responses to the Department where BGH specifically states that it did not assume advertising expenses on behalf of its customers, and to the Verification Report where there is no statement by the Department that it found these expenses to constitute direct selling expenses.

BGH also states that, with regard to the reported indirect selling expenses included in different accounts, the petitioners give no explanation of why they believe the costs included in these accounts represent direct selling expenses. BGH argues that the petitioners' reliance on evidence contained in the Verification Report to argue that expenses included in these accounts should be included as direct

selling expenses, is misplaced. Specifically, BGH argues that, with regard to one specific account, expenses included in this account were not recorded in the same cost center for each company because companies did not use uniform cost center codes.

With regard to the petitioners' comments regarding another specific account, BGH states that the discussion of this account in the Verification Report concerned whether the Department should consider expenses included in this account as indirect selling expenses or general and administrative expenses. BGH states that this discussion did not concern whether these expenses should be considered indirect selling expenses or direct selling expenses.

Therefore, BGH argues the Department should reject the petitioners' argument that the Department should "re-code" BGH's indirect selling expenses as direct selling expenses.

Department's Position: We agree with BGH that certain indirect selling expenses should not be reclassified as direct selling expenses. The focus of the Department's verification of indirect selling expenses was to determine if BGH had properly accounted for all indirect selling expenses. In verifying this information, we conducted a thorough examination of BGH's accounting system and the methodology used to collect the indirect selling expenses reported to the Department by BGH. See Verification Report, at page 29-30. As noted in the Verification Report, there were certain inconsistencies in the manner in which certain expenses were derived from the different BGH affiliated companies, but these inconsistencies were primarily due to the differences in accounting systems, rather than a failure to properly report indirect selling expenses.

Regarding whether any of these expenses should be treated as direct selling expenses, as stated in the Verification Report, the Department observed during verification that in collecting and categorizing selling expenses BGH "did not further examine the specific types of expenses recorded in specific cost types or cost centers." See Verification Report, at pages 29-30. The Department specifically requested BGH to state whether it incurred certain types of direct selling expenses, such as advertising or warranties, but did not state that BGH should conduct a detailed examination of each of the expenses recorded in each cost center department or should base its response on some other basis, such as general knowledge of its advertising or warranty practices. Nevertheless, if the evidence indicates that certain expenses should have been reported as direct rather than indirect selling expenses, the Department will take those findings into account in making its preliminary or final determinations. In this review, there is no evidence on the record to dispute BGH's statement that it did not incur direct advertising expenses. Therefore, we find that there is no basis for reclassifying these expenses as direct selling expenses.

Comment 3: U.S. Commissions

Petitioners' Argument: The petitioners argue that the Department's recalculation of certain

commissions paid to BGH's affiliated U.S. sales agent should be revised to reflect the higher commission rate originally reported by BGH. The petitioners claim that the contract establishing the new commission rate was not actually signed until four months after the end of the POR and the Department never verified that the terms of the new rate were also being applied to all sales made after the date of the new commission agreement. In fact, the petitioners argue, BGH admitted at verification that only "some" of BGH's mills had begun adjusting for the new lower commission rate, while others continued to apply the prior and higher rate. The petitioners argue that this raises suspicion concerning the legitimacy of the Department's application of the new commission rate to all sales made after date indicated in the new commission agreement.

Respondent's Argument: BGH argues that, contrary to the petitioners' claim, the Department decision to revise the commission rate was fully verified and should not be revised as suggested by the petitioners. BGH states that the Verification Report, at page 32, clearly states that the Department verified the effective date of the new commission rate and that BGH was fully reimbursed for the overpayment of commissions for the portion of the POR covered by the new commission rate.

Department's Position: We disagree with the petitioners' arguments that we should not have used the revised commission rate. On its U.S. sales, BGH pays a commission to its U.S. affiliate and the affiliate in turn pays a portion of that commission to an unaffiliated agent. At verification, we confirmed that the commission rate was revised to a lower amount and that BGH was reimbursed by its U.S. affiliated sales agent for the difference in terms between the old commission agreement and the new commission agreement signed in 2003. See Verification Report, at page 32. Although this revision to the commission rate was completed several months after the end of the POR, we have no reason to question the "legitimacy" of this new commission rate, as raised by the petitioners. At verification, we examined the documents related to the renegotiation of the commission agreement and noted that the commission renegotiation had been under discussion for some time prior to its actual implementation, and that the revised rate applied to all sales, not just sales of the subject merchandise. Similarly, the reimbursement to BGH was retroactive to a period beginning a few months prior to the end of the POR to a period several months after the close of POR and was for all sales booked by BGH's U.S. affiliate. Thus, this reimbursement only applied to a few months at the end of the POR and applied to subject as well as non-subject merchandise. The petitioners are correct that at the time of verification in December, 2003, while certain BGH mills in Germany had begun to reflect the new commission rate on sales made by BGH's U.S. affiliate, others were still applying the old rate. While BGH stated that this would require future reimbursement by BGH's affiliate for these sales, we note that the sales subject to the continued overpayment of commissions are not covered by the POR. We will continue to monitor this issue in subsequent administrative reviews.

Comment 4: Gross Unit Price Clerical Error

Respondent's Argument: At verification, BGH informed the Department that it had reported the

incorrect gross unit price for one observation, but that in the Preliminary Results, the Department made an error in correcting this gross unit price. BGH requests that the Department correct the gross unit price for this observation to the correct value indicated in the Verification Report.

Department's Position: The Department agrees with BGH and has corrected the gross unit price of this transaction. See the Memorandum from Team to File, "Final Results Calculation Memorandum from the BGH Group of Companies" ("BGH Final Calc Memo"), dated June 4, 2004 which is on file in the Department's CRU.

Comment 5: Adjustment in Quantity Clerical Error

Respondent's Argument: BGH claims that, during verification, BGH reported that it had incorrectly recorded certain quantity adjustments as billing adjustments. In correcting for this error in the Preliminary Results, the Department adjusted the quantity of the affected observation, but it failed to delete the corresponding billing adjustment. Accordingly, the Department should correct this error in the final results by deleting the billing adjustment for the affected observation.

Department's Position: The Department agrees with BGH and has corrected the billing adjustment field for this observation. See the BGH Final Calc Memo.

Comment 6: Arm's Length Test Matching Criteria

Petitioners' Argument: The petitioners argue that in the model match portion of the comparison market program for the Preliminary Results, the Department correctly included the list of physical characteristics of the subject merchandise at line 2761 of the program but failed to include these physical characteristics at lines 2785 and 2786 of the same program. The petitioners provide suggested programming language to correct for this error.

Department's Position: We have reviewed the section of the Preliminary Results comparison market program noted by the petitioners. The arm's length test incorporates the numeric values to which the physical characteristics are assigned at line 2761 of the program. The arm's length test incorporates these numeric values also at lines 2785 and 2786 by the order those numeric values are listed in the sales database. The values are incorporated by order of appearance, not by the names assigned to those values. The names assigned to the values at line 2785 and 2786 are merely boilerplate SAS language that has no bearing on the values themselves. Therefore, in the Preliminary Results, the program did incorporate the correct physical characteristics in the arm's length test. However, we do note that in the Preliminary Results, only four of the six values identified at line 2761 of the comparison market program were incorporated at lines 2785 and 2786 of the same program. Therefore, we have added language at lines 2785 and 2786 of the comparison market program to ensure that all six values identified at line 2761 are included in the arm's length test. In addition, we have changed the boilerplate

names assigned to the values at lines 2785 and 2786 for clarity and to conform with the names given to these values at line 2761. See the BGH Final Calc Memo.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of this review and the final weighted-average dumping margin for the reviewed firm in the Federal Register.

AGREE _____

DISAGREE _____

James J. Jochum
Assistant Secretary
for Import Administration

Date